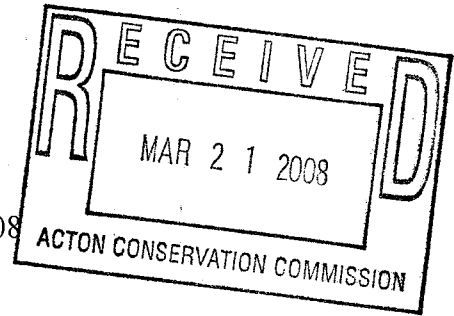


# ANDERSON & KREIGER LLP

ELIZABETH M. PYLE  
epyle@andersonkreiger.com  
Direct phone: 617-621-6531  
Direct fax: 617-621-6631



March 20, 2008

**By Certified Mail, RRR**  
**7005 1160 0004 6431 6923**

Steven W. Kelley and Rachel K. Kelley  
70 Newtown Road  
Acton, MA 01720

**Re:    NOTICE OF VIOLATION OF MASSACHUSETTS GENERAL LAWS**  
**CHAPTER 214, SECTION 7A**

Dear Mr. and Ms. Kelley:

Pursuant to G.L. c. 214, § 7A, notice is hereby given of violations of the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 (the "Act"), and the Acton Wetlands Protection Home Rule Bylaw (the "Bylaw") occurring at your property at 70 Newtown Road, Acton, Massachusetts (the "Site"). These violations occurred due to your unauthorized cutting of approximately 20 mature trees within the 100-foot buffer zone to Bordering Vegetated Wetlands and the "no disturb" zone as defined in the deed restriction for the Site (hereinafter, the "Deed Restriction") recorded at the Middlesex County Registry of Deeds at Book 33751, Page 080. On information and belief, your unauthorized cutting of trees occurred on or about January 24, 2008.

The Act and the Bylaw are "a statute [and a] bylaw ... the major purpose of which is to prevent or minimize damage to the environment." Your unauthorized cutting of trees within the 100-foot buffer zone has caused "damage to the environment" as defined under G.L. c. 214, § 7A, and violates the Act, the Bylaw, the Deed Restriction, and Orders of Conditions issued by the Acton Conservation Commission (the "Commission") under the Bylaw on August 20, 2001 and December 12, 2007 for the Site. Further damage to the environment is also likely to occur due to your previous disregard for the Commission's orders, coupled with your February 29, 2008 request to cut additional trees on the Site.

Absent an effective enforcement action by the Commonwealth, the Town of Acton and the Acton Conservation Commission intend to commence a civil action against you in Middlesex Superior Court pursuant to G.L. c. 214, § 7A to enforce the provisions of the Wetlands Protection Act and the Acton Wetlands Protection Bylaw following 21 days from the date of this notice.

I have also enclosed an Enforcement Order issued by the Commission against you. The Commission intends to inspect the Site to assess the totality of the violations, and to determine a

Steven W. Kelley and Rachel K. Kelley

March 20, 2008

Page 2

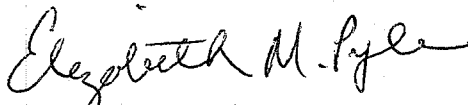
mitigation plan which may include site restoration, a permanent delineation of the "no disturb" areas, and the levying of fines. Please be advised that you may not disturb the wetland buffer zones on the Site or the "no disturb" zone in the Deed Restriction while this matter is pending before the Commission. Without limitation,, there must be no further cutting of trees, no planting of trees, no removal or grinding of stumps, no filling with clean fill or yard waste, and no use of herbicides or pesticides.

If this matter cannot be resolved to the Commission's satisfaction, we intend to file with the Superior Court a copy of the enclosed draft Complaint following expiration of the 21-day notice period. Please immediately contact either the Commission's Agent, Thomas Tidman, or me to further discuss this matter.

Notice of this violation under G.L. c. 214, §7A is being sent contemporaneously to the Attorney General and Department of Environmental Protection as required by statute.

We look forward to your prompt response.

Sincerely,



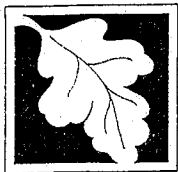
Elizabeth M. Pyle

Enclosures

cc. Attorney General Martha Coakley, Esq. **(By Certified Mail, RRR 7005 1160 0004 6431 5421 w/out enclosures)**

Commissioner Laurie Burt, Massachusetts Department of Environmental Protection  
**(By Certified Mail, RRR 7005 1160 0004 6431 5414 w/out enclosures)**

Thomas Tidman, Acton Conservation Commission (by regular mail, with enclosures)



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 9A – Enforcement Order**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

Provided by DEP

## A. Violation Information

This Enforcement Order is issued by:

ACTON

Conservation Commission (Issuing Authority)

February 26, 2008

Date

To:

Steven W. Kelley & Rachel K. Kelley

Name of Violator

70 Newtown Road, Acton

Address

1. Location of Violation:

Steven W. Kelley & Rachel K. Kelley

Property Owner (if different)

70 Newtown Road

Street Address

Acton

City/Town

E-3

Assessors Map/Plat Number



82

Parcel/Lot Number

2. Extent and Type of Activity (if more space is required, please attach a separate sheet):

Extensive tree cutting within 100' of a Bordering Vegetated Wetland; action is in violation of existing Order of Conditions issued on December 12, 2007, tree cutting is not authorized in the Order of Conditions, no request was made of the Conservation Commission or the Conservation Administrator, and the cutting of approximately 20 mature trees occurred not only in the wetland buffer zone, but in an area specifically prescribed in the Order of Conditions and in a deed restriction recorded in the Middlesex County Registry of Deeds as a permanent area of no disturbance.

## B. Findings

The Issuing Authority has determined that the activity described above is in violation of the Wetlands Protection Act (M.G.L. c. 131, § 40) and its Regulations (310 CMR 10.00), because:

☒ the activity has been/is being conducted without a valid Order of Conditions.

☒ the activity has been/is being conducted in violation of the Order of Conditions issued to:

Steven W. Kelley & Rachel K. Kelley

Name

85-984

File Number

December 12, 2007

Dated

1, 9, 12, 13, 16,

Condition number(s)

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## B. Findings (cont.)

☒ Other (specify):

Acton Wetland Protection Bylaw, Chapter F: Condition Nos. 18, 22, 25, 31, 35, 41 and

Special Condition 3.

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## C. Order

The issuing authority hereby orders the following (check all that apply):

- ☒ The property owner, his agents, permittees, and all others shall immediately cease and desist from the further activity affecting the Buffer Zone and/or wetland resource areas on this property.
- ☐ Wetland alterations resulting from said activity should be corrected and the site returned to its original condition.
- ☐ Complete the attached Notice of Intent. The completed application and plans for all proposed work as required by the Act and Regulations shall be filed with the Issuing Authority on or before

---

Date

No further work shall be performed until a public hearing has been held and an Order of Conditions has been issued to regulate said work.

- ☒ The property owner shall take the following action to prevent further violations of the Act:

Conservation Commission and an independent wetlands expert will re-inspect the property in the spring to assess the totality of the violation, and determine a mitigation plan, up to and including restoration, a permanent delineation of the no-disturb areas, and/or levying of fines, as provided for in the Town of Acton Wetlands By-Law, of \$10 per inch of circumference of the trees that were removed.

Until final determination by the Commission, no further disturbance is to occur in the wetland buffer zones, including that area identified on the June 27, 2001 plan as a "No Disturb" area. This includes, but is not limited to, no further cutting of trees, no planting of trees, no removal or grinding of stumps, no filling with clean fill or yard waste, no use of herbicides or pesticides.

---

Failure to comply with this Order may constitute grounds for additional legal action. Massachusetts General Laws Chapter 131, Section 40 provides: "Whoever violates any provision of this section (a) shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment for not more than two years, or both, such fine and imprisonment; or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation". Each day or portion thereof of continuing violation shall constitute a separate offense.

---

## D. Appeals/Signatures

An Enforcement Order issued by a Conservation Commission cannot be appealed to the Department of Environmental Protection, but may be filed in Superior Court.

Questions regarding this Enforcement Order should be directed to:

Tom Tidman, Natural Resources Director

Name

978 264 9631

Phone Number

8 - 5

Hours/Days Available

Issued by:

ACTON

Conservation Commission

In a situation regarding immediate action, an Enforcement Order may be signed by a single member or agent of the Commission and ratified by majority of the members at the next scheduled meeting of the Commission.

Signatures:

*Terrence Maitland*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7005 1160 0004 6431 6923

Signature of delivery person or certified mail number

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

Superior Court Department  
Civil Action No. \_\_\_\_\_

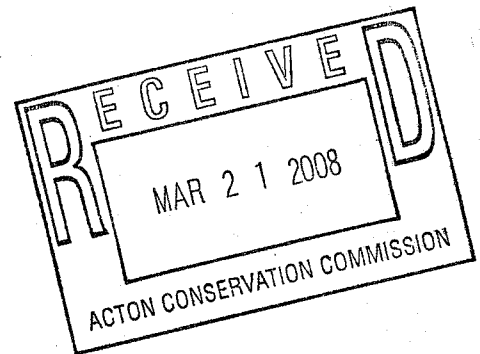
TOWN OF ACTON and the ACTON  
CONSERVATION COMMISSION,

Plaintiffs,

v.

STEVEN W. KELLEY and RACHEL K.  
KELLEY,

Defendants.



**COMPLAINT**

1. This is an action under the Massachusetts Wetlands Protection Act, General Laws Chapter 131, Section 40 (the "Act"), the Acton Wetlands Protection Home Rule Bylaw (the "Bylaw"), Massachusetts General Laws Chapter 214, Sections 1 and 7A, and a recorded deed restriction to prevent damage to the environment by defendants Steven W. Kelley and Rachel K. Kelley on property located at 70 Newtown Road in Acton, Massachusetts (the "Site").

2. Among other actions, the defendants have cut down approximately 20 mature trees in a "no disturb" buffer zone adjacent to wetland resource areas on the Site, in violation of the Act, the Bylaw, previous Orders of Conditions issued by the Commission for the Site, and a deed restriction recorded at the Middlesex County Registry of Deeds in favor of the Town and the Commission.

3. The plaintiffs seek a permanent injunction to prevent future damage to wetland resource areas on the Site, and a corrective injunction to compel the defendants to restore the Site to its previous condition.

## **PARTIES**

4. The plaintiff Town of Acton (the “Town”) is a municipal corporation and a political subdivision of the Commonwealth of Massachusetts with its principal office at Town Hall, 472 Main Street in Acton, Massachusetts.

5. The Acton Conservation Commission (the “Commission”) is the duly constituted conservation commission of the Town under General Laws Chapter 40, Section 8C, having enforcement powers and duties under the Act and the Bylaw. The Commission’s office is located at Town Hall, 472 Main Street in Acton, Massachusetts.

6. Defendants Steven W. Kelley and Rachel K. Kelley own and reside at property located at 70 Newtown Road in Acton, Massachusetts (the “Site”).

## **FACTS**

7. The Site is triangular in shape and contains approximately four acres of land. It is bordered to the northeast by Newtown Road and to the south by Conant Brook. The Site contains woodlands and extensive wetland resource areas protected under the Act and the Bylaw, including Bordering Vegetated Wetlands (“BVW”) located both on the northeast portion of the Site along Newtown Road, and also on the southern portion of the property. See Notice of Intent Plan, dated September 7, 2000, last revised June 27, 2001, attached hereto as Exhibit A.

8. In addition to BVW, there is a vernal pool on the northern portion of the property, and an intermittent stream crosses the southern portion of the property before intersecting with Conant Brook. Approximately half the Site is within the 200-foot Riverfront Area to Conant Brook, and almost the entire Site is within the 100-foot buffer zone to BVW. The Site currently contains a single-family house with a brick patio, driveway, and septic system. The existing house is sandwiched between the northern and southern areas of BVW. See Exhibit A.

9. On August 20, 2001, the Commission issued an Order of Conditions ("OOC") to Technical Consulting Group of 67 Acton Road, Westford, Massachusetts and Frank Tricone of 5 Tanners Circle, Woburn, Massachusetts, the property owner, for the construction of the house and associated infrastructure at the Site. Special Condition #3 of the OOC required that:

A deed restriction shall be written and enacted by the applicant protecting the land outside of the proposed line of haybales as shown on the NOI and Wildlife Habitat Enhancement Plan as a permanent restricted area.... This sketch plans of the metes and bounds of the restricted area shall become a permanent restriction within the deed in perpetuity. Said restriction shall note the following:

- a. There will be no disturbance outside of the proposed line of haybales (work area).
- b. The driveway must remain as gravel where noted on said plan.
- c. The Wildlife Enhancement Plan shall be maintained as described on said plan.
- d. Said deed restriction shall reference this Order of Conditions voted on August 1, 2001.

10. On September 28, 2001, Frank Tricone sold the Site to Westchester Company, Inc. of P.O. Box 672, Acton, Massachusetts. The deed for that sale included a restriction stating:

The premises are conveyed subject to an Order of Conditions issued by the Acton Conservation Commission DEP File No. 85-723 to be recorded herewith and which requires that there shall be no future disturbance outside the proposed line of haybales as shown on the Notice of Intent Plan, dated September 7, 2000, revised June 27, 2001 and the Wildlife Habitat Enhancement Plan, Dated June 27, 2001, both plans having been filed with the Acton Conservation Commission, which portion of the premises shall become a permanent restricted area (the "restricted area"). The driveway must remain as gravel where noted on said plans which restriction shall extend in perpetuity.... The restricted area is further described on a sketch plan showing the metes and bounds of such restricted area and which is on file with the Acton Conservation Commission. Copy attached as Exhibit "A".

A true copy of the deed restriction (hereinafter, the "Deed Restriction"), recorded at the Middlesex County Registry of Deeds at Book 33751, Page 080, is attached hereto as Exhibit B.



A true copy of the Wildlife Habitat Enhancement Plan, Dated June 27, 2001, is attached hereto as Exhibit C.

11. On May 3, 2003, the defendants purchased the Site, subject to the Deed Restriction, from Westchester Company, Inc.

12. In approximately May 2004, the defendants began construction of a front patio within the 100-foot buffer zone to BVW without filing a Notice of Intent ("NOI") with the Commission or receiving any approval from the Commission for such work.

13. On May 27, 2004, at the request of the Commission, the defendants submitted a Request for Determination of Applicability to the Commission to obtain an after-the-fact authorization for the patio construction. On June 18, 2004, the Commission issued negative Determinations of Applicability finding that the patio and other work proposed by the defendants was within an Area Subject to Protection Under the Bylaw and was within the Buffer Zone under the Act and Bylaw, but would not alter an Area Subject to Protection.

14. In May 2007, the defendants paved the gravel portion of their driveway in violation of the August 20, 2001 OOC and the Deed Restriction. The defendants did not notify the Commission or obtain the Commission's approval before completing that work.

15. In November 2007, the Commission required the defendants to file an after-the-fact NOI for the paving of the driveway. On December 12, 2007, the Commission issued an OOC to the defendants authorizing the paving of the driveway, in part because "leaving the pavement in place would be preferable to the disturbance that its removal would require." See December 12, 2007 Order of Conditions, p. E-8, No. 7, attached as Exhibit D. Special Condition No. 3 of the December 12, 2007 OOC also specifically provided that:

This OOC does not address, affect or supplant the special condition in the August 1, 2001 OOC requiring as a permanent deed restriction that the land lying

between the wetlands and the 2001 limit-of-work, as partially delineated by stone walls shown in the NOI Plan to the north and south of the house, be a permanently restricted area and remain undisturbed.

16. On November 15, 2007, at a site walk with the Commission to view the driveway, defendant Steven W. Kelley asked the Commission's agent, Thomas Tidman, whether Mr. Kelley could remove trees on the Site located in the wooded area to the south of the house, between the stone wall and the wetlands. Mr. Tidman and Conservation Commissioners present informed Mr. Kelley that those trees were within the "no disturb" area specified in prior OOCs for the Site and the Deed Restriction, and that trees could not be removed from that location. Mr. Tidman and Conservation Commissioners present said that Mr. Kelley could remove a few trees outside of the no-disturb area that posed a clear and present threat to the house, provided that Mr. Tidman received prior notice of the intent to cut them down. The defendants provided no such notice.

17. On or about January 24, 2008, the defendants caused trees to be removed from the "no disturb" area in violation of the August 20, 2001 and December 12, 2007 OOCs for the Site, the Act, the Bylaw, the Deed Restriction, and the specific instructions of the Commission. Approximately 20 mature trees were removed from the "no disturb" zone.

18. On February 29, 2008, Mr. Kelley left Mr. Tidman a voice mail message asking if Mr. Kelley could cut additional trees on the Site. Mr. Tidman informed Mr. Kelley by voice mail that Mr. Kelley could not cut additional trees without the Commission's authorization.

**COUNT I**  
**(General Laws Chapter 131, Section 40)**

19. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. The Act states that:

No person shall ... alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, ... or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section. Each day such violation continues shall constitute a separate offense ....

21. The Massachusetts Department of Environmental Protection's regulations promulgated under the Act at 310 CMR 10.00 *et seq.* provide that activities within the 100-foot buffer zone to BVW must be reviewed and approved by the Commission if they will alter an Area Subject to Protection under the Act. See 310 CMR 10.02(2)(b).

22. The defendants did not have, at any time relevant to the allegations in this Complaint, a valid, final OOC or any other approval from the Commission that authorized them to remove trees in the "no disturb" area within the 100-foot buffer zone to BVW.

23. The defendants have violated the Act by altering the buffer zone to BVW without the Commission's authorization.

24. The Act imposes upon anyone who violates any of its provisions liability for a civil penalty of up to \$25,000 for each day of violation.

**COUNT II**  
**(Acton Wetlands Protection Home Rule Bylaw)**

25. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 24 as if fully set forth herein.

26. Section F2 of the Bylaw provides that:

No person shall remove, dredge, fill or alter any resource area ... without first filing a Determination of Applicability, or a written Notice of Intent under this Bylaw, and obtaining and complying with the terms of said Determination or with an Order of Conditions.

27. Section F3.18 of the Bylaw defines “resource area” as “any area subject to protection under this bylaw and include[s] any bank, wetland, vernal pool, buffer zone, lands subject to flooding or riverfront area” (emphasis added).

28. Section F3.4(g) of the Bylaw defines the term “alter” as the “[d]estruction of plant life, including the cutting of trees, which may significantly impact the interests protected by this Bylaw”.

29. The defendants did not have, at any time relevant to the allegations of this Complaint, a valid permit under the Bylaw authorizing them to remove or cut trees in the “no disturb” area within the 100-foot buffer zone to BVW.

30. The defendants violated the Bylaw by cutting trees within the 100-foot buffer zone without a valid permit.

31. The defendants’ conduct in causing trees to be removed from the “no disturb” area was in direct violation of the August 20, 2001 and December 12, 2007 OOCs for the Site and the Deed Restriction.

**COUNT III**  
**(G.L. c. 214, § 7A)**

32. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 31 as if fully set forth herein.

33. General Laws Chapter 214, Section 7A provides that:

The superior court for the county in which damage to the environment is occurring or is about to occur may, upon a civil action in which equitable or declaratory relief is sought... by any political subdivision of the commonwealth, determine whether such damage is occurring or is about to occur and may, before the final determination of the action, restrain the person causing or about to cause such damage; provided, however, that the damage caused or about to be caused by such person constitutes a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment.

No such action shall be taken unless the plaintiffs at least twenty-one days prior to the commencement of such action direct a written notice of such violation or imminent violation by certified mail, to the agency responsible for enforcing said statute, ordinance, by-law or regulation, to the attorney general, and to the person violating or about to violate the same....

34. The Wetlands Protection Act is a statute “the major purpose of which is to prevent or minimize damage to the environment.”

35. The Acton Wetlands Protection Home Rule Bylaw is a bylaw “the major purpose of which is to prevent or minimize damage to the environment.”

36. The defendants’ conduct in cutting trees within the 100-foot buffer zone to BVW within the “no disturb” zone in the Deed Restriction is in violation of both the Act and the Bylaw and the OOCs issued by the Commission under the Bylaw.

37. Damage to the environment is occurring as a result of the defendants’ conduct in cutting trees on the Site in violation of the Act, the Bylaw, prior OOCs for the Site, and the Deed Restriction. Further such damage is likely to occur as a result of the defendants’ previous repeated and flagrant disregard for the Commission’s orders, and the defendants’ request on February 29, 2007 to cut additional trees on the Site.

38. The plaintiffs have duly notified the Massachusetts Department of Environmental Protection, which is the agency responsible for enforcing the Act, the Attorney General, and the defendants of the violation of the Act and the Bylaw in writing, by certified mail, more than twenty-one days prior to the commencement of this action.

**COUNT IV**  
**(Breach of Contract)**

39. The plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 38 as if fully set forth herein.

40. The defendants' conduct described above breached the Deed Restriction on the Site recorded in favor of the Commission and the Town.

41. The plaintiffs are entitled to seek restitution in the form of restoration of the "no disturb" zone in the Deed Restriction due to the defendants' conduct.

**WHEREFORE**, the plaintiffs ask the Court to grant the following relief:

1. Declare that the defendants have violated the Act and the Bylaw by cutting trees in the 100-foot buffer zone to BVW on the Site without the Commission's authorization;
2. Issue a temporary restraining order requiring that the defendants Steven W. Kelley and Rachel K. Kelley cease and desist (a) all work in the 100-foot buffer zone to Bordering Vegetated Wetlands on the property located at 70 Newtown Road in Acton, Massachusetts without a valid Order of Conditions from the Commission, (b) all activities on the property located at 70 Newtown Road in Acton, Massachusetts in violation of the Deed Restriction, and (c) all activities that will or may alter wetland resource areas or the buffer zone on the property located at 70 Newtown Road in Acton, Massachusetts except in compliance with a valid Order of Conditions or other authorization from the Commission;
3. Issue a short order of notice to the defendants to show cause why they should not be preliminarily enjoined in accordance with paragraph 4 hereof;
4. Issue a preliminary injunction requiring that the defendants Steven W. Kelley and Rachel K. Kelley cease and desist (a) all work in the 100-foot buffer zone to Bordering Vegetated Wetlands on the property located at 70 Newtown Road in Acton, Massachusetts without a valid Order of Conditions from the Commission, (b) all activities on the property located at 70 Newtown Road in Acton, Massachusetts in violation of the Deed Restriction, and (c) all activities that will or may alter wetland resource areas or the buffer zone on the property located at

70 Newtown Road in Acton, Massachusetts except in compliance with a valid Order of Conditions or other authorization from the Commission;

5. Issue a permanent injunction:

- a. Requiring that the defendants Steven W. Kelley and Rachel K. Kelley cease and desist (a) all work in the 100-foot buffer zone to Bordering Vegetated Wetlands on the property located at 70 Newtown Road in Acton, Massachusetts without a valid Order of Conditions from the Commission, (b) all activities on the property located at 70 Newtown Road in Acton, Massachusetts in violation of the Deed Restriction, and (c) all activities that will or may alter wetland resource areas or the buffer zone on the property located at 70 Newtown Road in Acton, Massachusetts except in compliance with a valid Order of Conditions or other authorization from the Commission; and
- b. Ordering the defendants to restore the Site to its condition before the trees were removed;

6. Assess a civil penalty of \$25,000 payable to the Town for each day of violation of the Act;
7. Grant the Town its costs, including expert fees, pursuant to G.L. c. 214, § 7A; and
8. Grant such further relief as the Court deems just and proper.

By their attorneys,

Stephen D. Anderson (BBO #018700)  
Elizabeth M. Pyle (BBO #647425)  
ANDERSON & KREIGER LLP  
One Canal Park, Suite 200  
Cambridge MA 02141  
(617) 621-6500

Dated: March 20, 2008

# EXHIBIT A

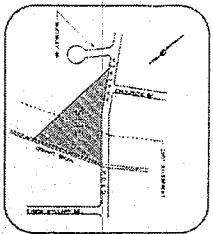


NOTE: EMBANKMENT RETAINED FROM AS SHOWN  
CONSTRUCTION SHALL BE TO MAINTAIN EXISTING  
TOP OF ROAD AND SLOPE. THE EMBANKMENT SHALL  
BE TO THE EXISTING EXISTING ROADWAY. THE  
EMBANKMENT SHALL BE ON EXISTING DRIVE 14.3  
FEET. THE EMBANKMENT SHALL BE 27 FEET.

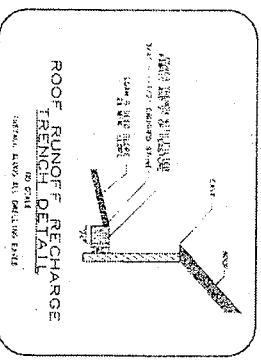
TOP OF ROAD  
ELEVATION 23.10 (C.O.D.)

NEW TOWN ROAD

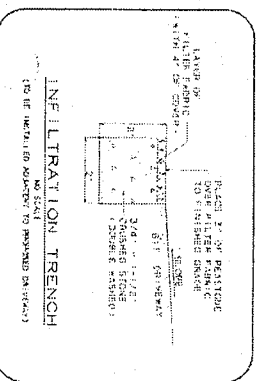
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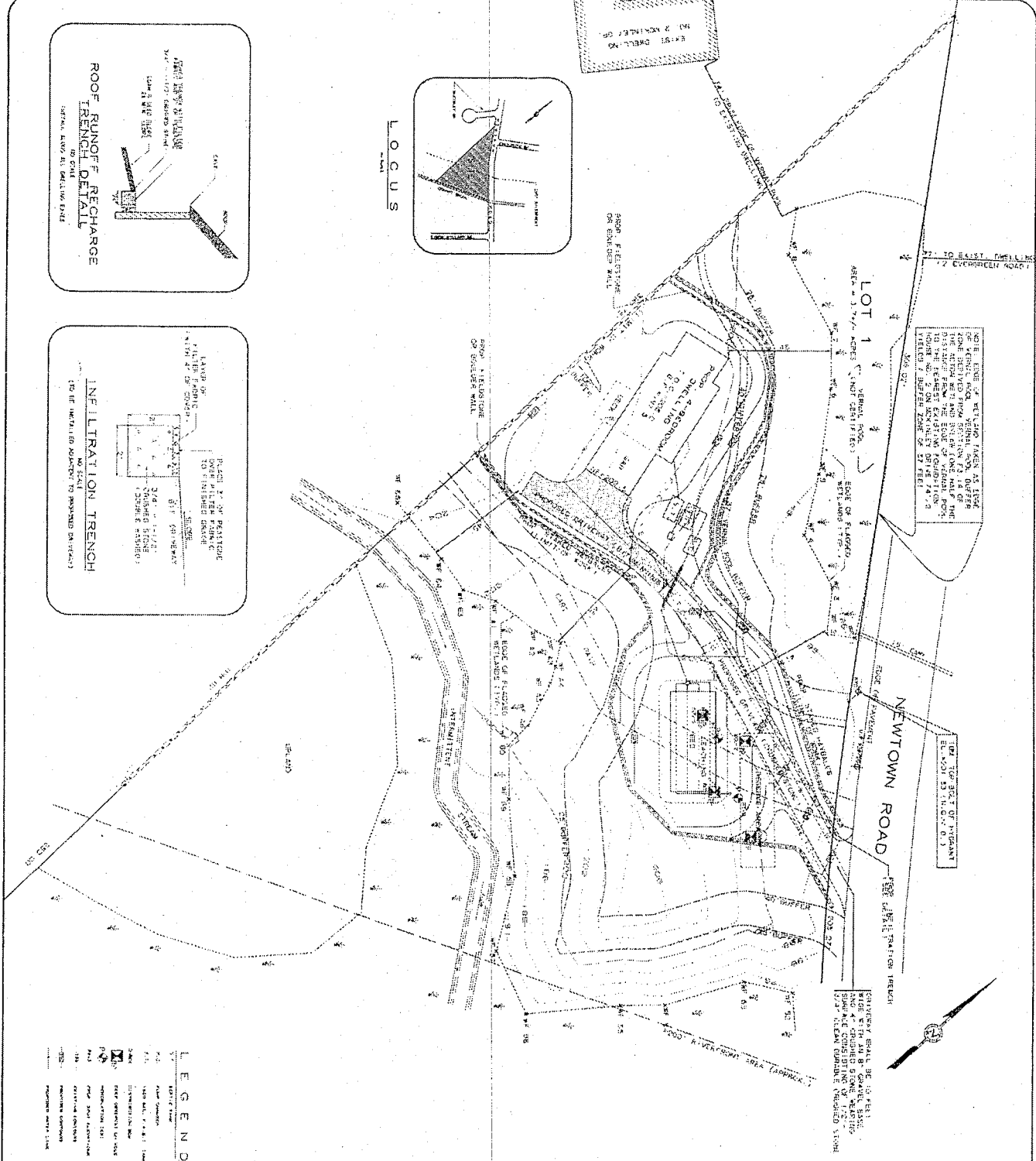
LOCUS



ROOF RUNOFF RECHARGE  
TRENCH DETAIL



INFILTRATION TRENCH  
DETAIL



# CONSTRUCTION SEQUENCE

1. INSTALL EROSION CONTROL BARRIER AT LOCATIONS SHOWN ON PLAN
2. CLEAR AND STUMP NECESSARY VEGETATION.
3. EXCAVATE FORMS FOR WALL, CONSTRUCT RETAINING WALLS, GRADE EXISTING DRIVE, INSTALL SITE UTILITIES.
4. FILL GRADE DRIVEWAY, STABILIZE DISTURBED AREAS WHERE FEASIBLE.
5. CONSTRUCT ROOF RECHARGE RECHARGE BARRIERS.
6. STABILIZE ALL REMAINING DISTURBED AREAS WITH LUM AND SEED.
7. INSTALL STONE WALL AT LOCATIONS SHOWN ON PLAN.
8. COMPLETE PLANTING PLAN AS DETAILED ON ATTACHED DRAWING. THE PLANTING SHALL BE COMPLETED BY THE END OF THE CONSTRUCTION PERIOD. THE PLANTING SHALL BE COMPLETED BY THE END OF THE CONSTRUCTION PERIOD.
9. REMOVE INSURANCE ON CONSTRUCTION BARRIERS FOLLOWING SITE INSPECTION AND APPROVAL BY THE COMMISSION.

## GENERAL NOTES

1. NO WORK SHALL BE DONE WITHIN A WITHIN THE EXISTING AREA.
2. EXISTING AREAS SHALL BE MAINTAINED AS SHOWN ON PLAN.
3. ALL SLOPE FROM EXISTING DRIVE INTO THE DISTURBED AREAS SHALL BE MAINTAINED AS SHOWN ON PLAN.
4. THE LOCATION OF THE EXISTING DRIVE SHALL BE MAINTAINED AS SHOWN ON PLAN.
5. THE EXISTING DRIVE SHALL BE MAINTAINED AS SHOWN ON PLAN.
6. EXISTING DRIVE SHALL BE MAINTAINED AS SHOWN ON PLAN.
7. EXISTING DRIVE SHALL BE MAINTAINED AS SHOWN ON PLAN.
8. EXISTING DRIVE SHALL BE MAINTAINED AS SHOWN ON PLAN.
9. EXISTING DRIVE SHALL BE MAINTAINED AS SHOWN ON PLAN.

## STAKED HAYBALE DETAIL



## NOTICE OF INTENT PLAN

LOCATION:  
LOT 1 NEW TOWN ROAD  
ACTION, MASSACHUSETTS  
APPLICANT:  
TECHNICAL CONSULTING GROUP  
67 ACTION ROAD  
WESTFORD, MASSACHUSETTS 01780

DATE: SEPTEMBER 7, 2000 SCALE: 1" = 20 FEET

**FORESTITE**

Endorsing Association, Inc.  
11185 Old Road, Suite 10  
(978) 486-0959

# EXHIBIT B

QUITCLAIM DEED

I, FRANK TRICONE, of 5 Tanners Circle, Woburn, Middlesex County, Massachusetts for consideration paid of ONE HUNDRED & FIFTY AND NO/100 (\$150,000.00) DOLLARS

grant to WESTCHESTER COMPANY, INC., a Massachusetts corporation, of P. O. Box 672, Acton, Middlesex County, Massachusetts, with QUITCLAIM COVENANTS

A certain parcel of land in Acton on the Westerly side of Newtown Road formerly called Gravel Pit Road about one half mile Northwesterly of the Village of Acton Center containing about four acres and bounded and described as follows:

Beginning at the

SOUTHEASTERLY corner of the premises at said Newtown Road and the center of a brook at land formerly of James B. Tuttle; thence

NORTHWESTERLY on said road about six hundred and ninety five (695) feet to the end of a wall at land of the heirs of Isaac Reed; thence

SOUTHERLY on a wall by said Reed land about four hundred and fifty (450) feet to the end of the wall; thence in the same course on land formerly of James B. Tuttle about two hundred and eighty (280) feet to the center of a brook; thence

EASTERLY on the brook by land formerly of James B. Tuttle about five hundred and ten (510) feet to the point of beginning.

The premises are conveyed subject to an Order of Conditions issued by the Acton Conservation Commission DEP File No. 85-723 to be recorded herewith and which requires that there shall be no future disturbance outside the proposed line of haybales as shown on the Notice of Intent Plan, dated September 7, 2000, revised June 27, 2001 and the Wildlife Habitat Enhancement Plan, dated June 27, 2001, both plans having been filed with the Acton Conservation Commission, which portion of the premises shall become a permanent restricted area( the "restricted area"). The driveway must remain as gravel where noted on said plans which restriction shall extend in perpetuity beyond the issuance of a Certificate of Compliance. The restricted area is further described on a sketch plan showing the metes and bounds of such restricted area and which is on file with the Acton Conservation Commission. The Wildlife Enhancement Plan shall be maintained as described on said plan and the sketch plan setting forth the metes and bounds of the restricted area shall extend in perpetuity beyond the issuance of a Certificate of Compliance.

For my title see deed of Joseph Tricone to me dated August 14, 1972 and recorded with Middlesex South District Registry of Deeds, Book 12272, Page 706.

\* Copy attached as Exhibit 'A'

64-76 Newtown Rd. Acton, MA

Witness my hand and seal this 28th day of September, 2001

Frank Tricone  
Frank Tricone

*The Commonwealth of Massachusetts*

*Middlesex, ss*

September 28, 2001

Then personally appeared the above-named Frank Tricone and acknowledged the foregoing instruments to be his free act and deed, before me

Neil R. Lapierre

Neil R. Lapierre

My Commission Expires:

Notary Public

October 27, 2006

10/27/01 10:00 AM  
000000 000000

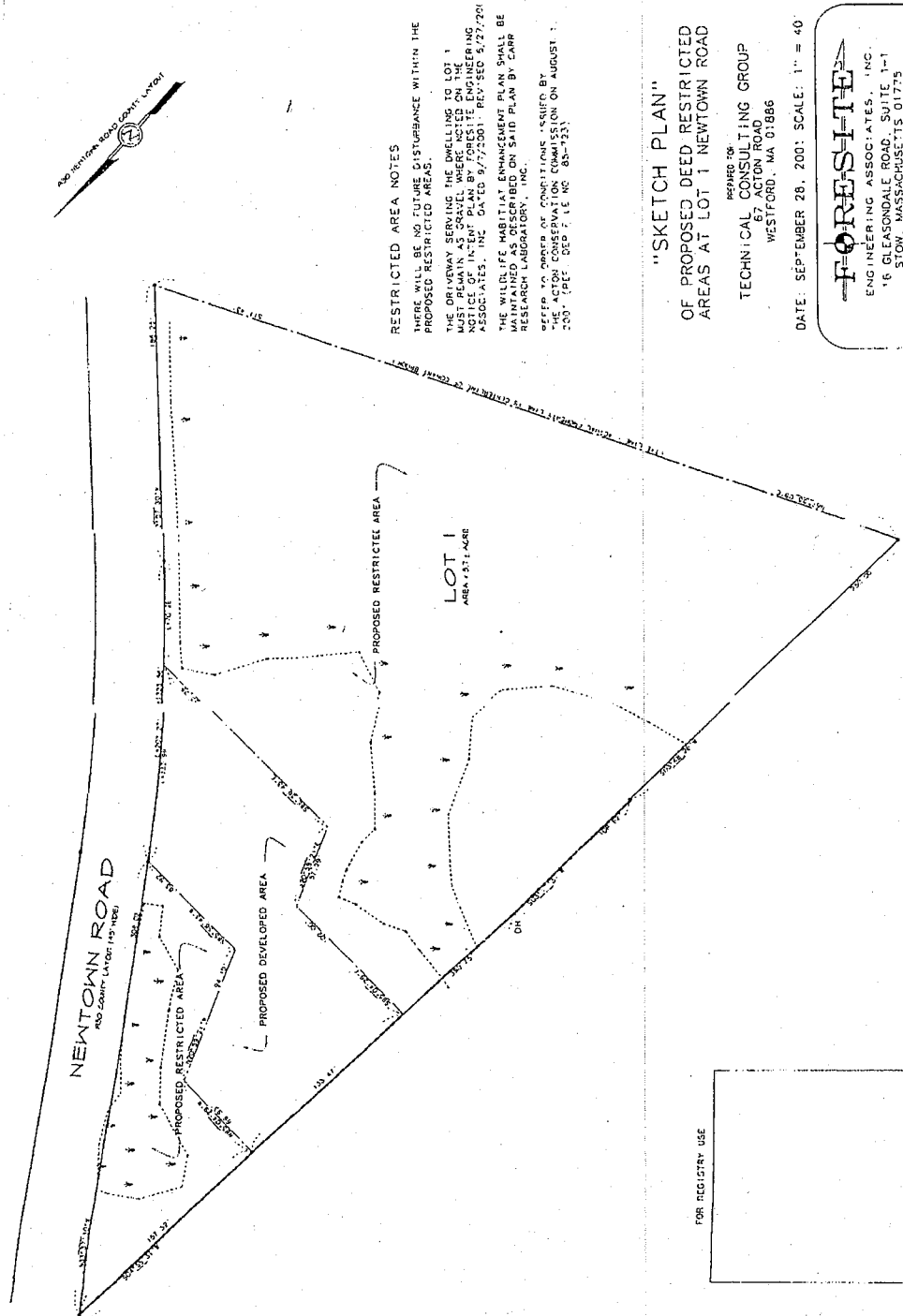
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

DATE 02-24-00 BY 000000

CANCELLED

CAMBRIDGE  
DEEDS REGISTRY  
MIDDLE SOUTH

EXHIBIT A



**RESTRICTED AREA NOTES**  
 THERE WILL BE NO FUTURE DISTURBANCE WITHIN THE PROPOSED RESTRICTED AREAS.  
 THE OBSERVATION REGARDING THE DWELLING TO LOT 1 MUST REMAIN AS NOTED WHERE NOTED ON THE NOTICE OF INTENT PLAN BY FORESITE ENGINEERING ASSOCIATES, INC. DATED 9/7/2001. REVISED 9/27/2001.  
 THE WILDLIFE HABITAT ENHANCEMENT PLAN SHALL BE MAINTAINED AS DESCRIBED ON SAID PLAN BY CANP RESEARCH LABORATORY, INC.  
 REFER TO ORDER OF CONDITIONS ISSUED BY THE ACTON CIVIL ENGINEERING BOARD ON AUGUST 1, 2001. SEE: 2001-11-02 80-1331.

**"SKETCH PLAN"**  
 OF PROPOSED DEED RESTRICTED AREAS AT LOT 1 NEWTOWN ROAD

PREPARED FOR:  
 TECHNICAL CONSULTING GROUP  
 67 ACTON ROAD  
 WESTFORD, MA 01886

DATE: SEPTEMBER 28, 2001 SCALE: 1" = 40'

**FORESITE**  
 ENGINEERING ASSOCIATES, INC.  
 16 GLEASONDALE ROAD, SUITE 1-1  
 STOW, MASSACHUSETTS 01775

FOR REGISTRY USE

# **EXHIBIT C**



# EXHIBIT D





DEP File No. 85-984

Applicant S &amp; R Kelley

**Order of Conditions  
Wetlands Protection Bylaw  
Chapter F**

From the ACTON CONSERVATION COMMISSION Issuing Authority

To Steven & Rachel Kelley  
(Name of person making request) (Name of property owner)

Address 70 Newtown Road, Acton MA 01720 Address \_\_\_\_\_

This Order is issued and delivered as follows:

☐ by hand delivery to person making request on \_\_\_\_\_ (date)

☒ by certified mail, return receipt requested on 12/12/2007 (date)

This project is located at \_\_\_\_\_

The property is recorded at the Registry of Middlesex South

Book 39045 Page 340

Certificate (if registered) \_\_\_\_\_

The Notice of Intent for this project was filed on November 8, 2007 (date)

The public hearing was closed on November 21, 2007 (date)

**Findings**

The ACTON CONSERVATION COMMISSION has reviewed the above-references Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the ACTON CONSERVATION COMMISSION at this time, the ACTON CONSERVATION COMMISSION has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection under the Act (check as appropriate):

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Public water supply  | <input type="checkbox"/> Flood Control                      | <input type="checkbox"/> Land containing shellfish                 |
| <input type="checkbox"/> Private water supply | <input checked="" type="checkbox"/> Storm damage prevention | <input type="checkbox"/> Fisheries                                 |
| <input type="checkbox"/> Ground water supply  | <input checked="" type="checkbox"/> Prevention of pollution | <input checked="" type="checkbox"/> Protection of Wildlife Habitat |

Total filing fee submitted under Acton Wetlands Protection Bylaw \$ 22

Therefore, the ACTON CONSERVATION COMMISSION hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests checked above. The ACTON CONSERVATION COMMISSION orders that all the work shall be performed in accordance with the said conditions and with the Notice of Intent references above. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

#### General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - (a) the work is a maintenance dredging project as provided for in the Act; or
  - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one period of up to three years upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the ACTON CONSERVATION COMMISSION on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in the size bearing the words, "Massachusetts Department of Environmental Protection, File Number 85-984".
10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

**\*\* PLEASE READ THE FOLLOWING GENERAL CONDITIONS REQUIRED BY THE  
TOWN OF ACTON WETLANDS BYLAW \*\***

18. No work shall be undertaken until the Order of Conditions has been reviewed and is clearly understood by the Contractor or his agent. It is the Applicant's responsibility to see that the Contractor clearly understands all items herein.
19. This Order of Conditions shall apply to any successor in interest or successor in control.
20. Members and agents of the Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the Order and to require the submittal of any data deemed necessary by the Commission for that evaluations.
21. All drainage facilities and related structures and equipment shall be continually operated and maintained so as to comply with this Order of Conditions. The operation and maintenance of the facilities and structures shall be on-going and will not expire at the end of one year or with the issuance of the Certificate of Compliance.
22. Any change made, or intended to be made, in the plans shall require the applicant to file a new Notice of Intent, or to inquire of the Commission, in writing, whether the change is substantial enough to require a new filing.
23. The Conservation Commission shall have the right to file this Order of Conditions in the Registry of Deeds should the applicant fail to do so within 60 days.
24. Accepted engineering and construction standards and procedures shall be followed in the completion of this project.
25. The Commission shall be notified in writing 10 days prior to the commencement of any site work. Failure to so notify the Commission shall result in the issuance of an Enforcement Order.
26. The Petitioner is advised that this Order in no way absolves him of responsibility to other property owners upon whose land he discharges water directly or indirectly.
27. Erosion control measures consisting of staked haybales unless otherwise approved by the Commission shall be installed during the first phase of construction and the Commission shall be notified of their placement and no work shall begin before inspection by the Commission.
28. Any materials collected by the erosion control measures shall be removed and properly disposed of.
29. All work shall be completed as quickly as possible to minimize the duration of exposure of disturbed areas. If work is suspended for a significant period of time (i.e. as during winter months), then temporary stabilization methods must be employed and maintained during the period of inactivity.
30. No salt or other deicing chemicals shall be used on roadways and parking areas on the site.
31. This order applies only to the work described in the Notice of Intent and shown on the plans referenced in Condition 12. A Determination of Applicability Form must be filed for any additional work on site in areas governed by the Town of Acton Wetlands Protection Bylaw.
32. All disturbed areas shall be top-soiled six inches and seeded.

33. Violation of any condition of this Order may result in the issuance of an Enforcement Order. Such Enforcement Order, if issued, will require the immediate cessation of all work until a hearing is held; such hearing will be held not more than 10 days from the issuance of the Enforcement Order.
34. The work authorized hereunder by the Acton Wetlands Protection Bylaw shall be completed within three years from the date of this Order unless the Order is renewed prior to expiration.
35. A fifty (50) foot setback of natural vegetation shall be maintained up-gradient from the wetland except as noted on the accepted plans (see page E-4 for plan reference).
36. No construction, either temporary or permanent shall occur within seventy-five (75) feet of the edge of wetlands. This shall include driveways; roadways; residential, commercial or industrial structures, etc. except as noted on the accepted plans (see page E-4 for plan reference).
37. There shall be no use of fertilizers, pesticides, herbicides or chemicals of any kind within the fifty (50) foot no construction zone.
38. There shall be no underground storage of gasoline, oil or other fuels or hazardous materials within the one-hundred (100) foot buffer zone.
39. The Commission reserves the right to impose additional conditions to mitigate any actual or potential impacts resulting from the permitted work.
40. All haybales placed for siltation prevention must be removed from the site within 30 days of the stabilization of the area of activity.
41. The work shall conform to the following plans and special conditions:

Title	Dated	Signed and Stamped by:	on file with:
Notice of Intent Plan	11/7/2007	Scott P. Hayes, Civil PE 41017	Acton Conservation

(Leave Space Blank)

Conservation Commission

Signature(s)

Fred J. Ke  
 Terrence Maitland  
 Lynn Postulate

William Fobery  
John Wadsworth

This Order must be signed by a majority of the Acton Conservation Commission.

On this 14th day of December, 2007, before me, the undersigned notary public, personally appeared Terrence Maitland, proved to me through satisfactory evidence of identification, which were known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose as Commissioner for the Acton Conservation Commission.

*Andrea H. Ristine*  
Notary Public – Andrea H. Ristine

February 27, 2009

My Commission Expires

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the Department of Environmental Protection to issue a Superseding Order, providing the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form as provided in 310\_CM 10.03(7) within ten days from the date of issuance of this determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and the applicant.

Detach on dotted line and submit to the **ACTON CONSERVATION COMMISSION** prior to commencement of work.

To **ACTON CONSERVATION COMMISSION** Issuing Authority

Please be advised that the Order of Conditions for the project at 70 Newtown Road, Acton

File Number 85 984 has been recorded at the Registry of Middlesex South and

has been noted in the chain of title of the affected property in accordance with General Condition 8 on 19

If recorded land, the instrument number which identifies this transaction is \_\_\_\_\_

If registered land, the document number which identifies this transaction is \_\_\_\_\_

Signature \_\_\_\_\_ Applicant \_\_\_\_\_

**DECISION  
NOTICE OF INTENT FILING  
FOR  
70 NEWTOWN ROAD  
TOWN ATLAS PLATE E-3, PARCEL 82  
DEP FILE NO. 85-984**

**Applicant:** Steven and Rachel Kelley

**Representatives:** Scott P. Hayes, PE No. 41017, Foresite Engineering; E. Michael Thomas, Esq.

**Date Filed:** November 8, 2007

**Hearing Closed:** November 21, 2007

**DECISION:**

On November 21, 2007, the Acton Conservation Commission voted unanimously to issue an Order of Conditions approving a Notice of Intent filing under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40 and the Town of Acton Wetland Protection Bylaw

The Commission bases its decision upon the Findings of Fact set forth below.

**FINDINGS OF FACT:**

1. The 70 Newton Road parcel lies almost entirely within the overlapping 100-foot buffer zones of two wetlands located in the northerly and southerly corners of the property.
2. On August 1, 2001, the Commission issued an Order of Conditions (OOC) under the Town of Acton Wetland Protection Bylaw ("Bylaw"), approving the construction of a single-family residence with associated driveway and septic system. The Massachusetts Department of Environmental Protection previously had issued a Superseding Order of Conditions, approving the project under the Massachusetts Wetlands Protection Act ("Act"). The OOC under the Bylaw included special conditions that were to be permanent restrictions in the property deed: (1) the land located between the wetlands and the haybale-delineated limit-of-work was to be a permanently restricted area and remain undisturbed; (2) a portion of the driveway was to remain gravel-surfaced; and (3) the area over the septic leaching field was to be maintained as a wildlife habitat, with a wildflower meadow, native plantings, a blackberry hedge, logs and a turtle nesting area in accordance with a Wildlife Habitat Enhancement Plan. The owner, Frank Tricone ("Tricone"), subsequently sold the property to Westchester Company, Inc. ("Westchester"), on September 28, 2001; the deed to Westchester included the permanent restrictions required by the OOC. The Commission issued a Certificate of Compliance to Westchester on May 7, 2003.
3. The Applicants and current owners, the Kelleys, purchased the property, including residence, from Westchester on April 24, 2003, shortly before the issuance of the Certificate of Compliance. The Kelleys' deed does not include the language of the deed restrictions but incorporates the language via a reference to the deed containing the restrictive language that Westchester received from Tricone.
4. On May 27, 2004, the Kelleys, at the direction of the Commission, filed a Request for Determination of Applicability respecting the already completed but not previously authorized construction in the front of the house of a brick patio, walkway, flower beds and replacement front steps. The Commission issued a negative determination of applicability on June 16, 2004.

5. In May of 2007, the Kelleys paved the gravel portion of the driveway in violation of the deed restriction, and in violation of the requirements under the Act and Bylaw that they obtain prior authorization from the Commission for work within 100 feet of wetlands.
6. At the request of the Commission, the Kelleys appeared before the Commission on July 18, 2007 to discuss the illegal driveway paving. The Kelleys explained that they had paved the driveway because the gravel surface had become a safety concern, particularly in winter. They said that they were unaware of the deed restrictions. The Commission explained that the restrictions nonetheless were legally binding.
7. Commissioners and the Town Agent, Thomas Tidman, visited the property on September 25, 2007 and November 15, 2007. Given the contour and slope of the driveway, the Commissioners considered the paved surface to be more reasonable than gravel for erosion-control as well as safety. The Commissioners also concluded that leaving the pavement in place would be preferable to the disturbance that its removal would require, and that the existing infiltration trench along the northerly edge of the driveway would compensate for some of the increase in impervious surface.
8. A modest expanse of lawn occupied the area immediately to the south of the driveway where the wildlife habitat enhancement area should have been. The Kelleys said that the area was lawn when they bought the property, although only two weeks after their purchase the Commission issued the Certificate of Compliance confirming, among other things, that the wildlife habitat area was in place. The Commissioners concluded that leaving the lawn in place, and enforcing the prohibition against fertilizers and all other chemicals, would be acceptable in lieu of requiring the alteration of the lawn area.

The Commissioners requested that the Kelleys file a Notice of Intent (NOI) respecting the already completed paving and that the NOI plan include the additional work that the Kelleys wished to do, specifically, install two lamp posts along the edge of the driveway and replace the mailbox at the foot of the driveway.

9. At the hearing on November 21, 2007, the Kelleys requested additional permission to plant native shrubs on the northerly side of the driveway. In recompense for their violations of the Act and the Bylaw, the Kelleys agreed that prior to December 12, 2007 they would make a donation of \$1,000.00 to the Town as a "mitigation payment," to be used for conservation land trail maintenance.

#### **SPECIAL CONDITIONS:**

1. In accordance with the revised Notice of Intent Plan, dated November 7, 2007, Rev. 11/21/2007 (NOI Plan), the Applicants may install two lamp posts along the edge of the driveway and replace the existing mailbox located at the foot of the driveway.
2. The Applicants may plant native shrubs on the northerly side of the driveway.
3. *Bylaw Only* -This Order of Conditions (OOC) supplants the following Special Conditions of the Order of Conditions dated August 1, 2001 (DEP File No. 85-723), requiring as permanent deed restrictions that a portion of the driveway remain gravel and requiring the maintenance of a wildlife habitat in accordance with a Wildlife Habitat Enhancement Plan dated June 27, 2001. This OOC does not address, affect or supplant the special condition in the August 1, 2001 OOC requiring as a permanent deed restriction that the land lying between the wetlands and the 2001 limit-of-work, as partially delineated by stone walls shown in the NOI Plan to the north and south of the house, be a permanently restricted area and remain undisturbed.





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**A. General Information**

From: ACTON

1. Conservation Commission

2. This issuance is for (check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:

Steven & Rachel

Kelley

a. First Name

b. Last Name

c. Company

70 Newtown Road

d. Mailing Address

Acton

e. City/Town

MA

f. State

01720

g. Zip Code

4. Property Owner (if different from applicant):

same

a. First Name

b. Last Name

c. Company

d. Mailing Address

e. City/Town

f. State

g. Zip Code

5. Project Location:

70 Newtown Road

a. Street Address

E-3

c. Assessors Map/Plat Number

Latitude and Longitude, if known (**note:**  
electronic filers will click for GIS locator):

Acton

b. City/Town

82

d. Parcel/Lot Number

42°29'24"N

e. Latitude

71°26'32"W

f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Middlesex South

a. County

39045

c. Book

b. Certificate (if registered land)

340

d. Page

7. Dates: November 8, 2007

a. Date Notice of Intent Filed

b. Date Public Hearing Closed

c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Notice of Intent Plan – 70 Newtown Road, Acton

a. Plan Title

Foresite Engineering

b. Prepared By

November 7, 2007

d. Final Revision Date

Scott P. Hayes, Civil PE #41017

c. Signed and Stamped by

1" = 20'

e. Scale

f. Additional Plan or Document Title

g. Date



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a. ☐ Public Water Supply      b. ☐ Land Containing Shellfish      c. ☒ Prevention of Pollution  
d. ☐ Private Water Supply      e. ☐ Fisheries      f. ☒ Protection of Wildlife Habitat  
g. ☐ Groundwater Supply      h. ☒ Storm Damage Prevention      i. ☐ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

**Approved** subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

**Denied** because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

3. <input checked="" type="checkbox"/> Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)				41' a. linear feet
Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet e. cu.yd dredged	b. square feet f. cu.yd dredged	c. square feet	d. square feet



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5 – Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**B. Findings (cont.)**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. c/y nourishmt.	d. c/y nourishmt.
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. cu.yd dredged	d. cu.yd dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. cu.yd dredged	b. cu.yd dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**C. General Conditions Under Massachusetts Wetlands Protection Act**

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided for in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to this Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MA DEP"]

"File Number 85-984"



## WPA Form 5 – Order of Conditions

85-984

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

### C. General Conditions Under Massachusetts Wetlands Protection Act

10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
18. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Special Conditions:

**SEE ATTACHED DECISION, FINDINGS OF FACT AND SPECIAL CONDITIONS ISSUED BY THE**

**ACTON CONSERVATION COMMISSION ( PAGE 10).**

If you need more  
space for  
additional  
conditions,  
select box to  
attach a text  
document ☐



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The ACTON Conservation Commission hereby finds (check one that applies):
3. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:

a. Municipal Ordinance or Bylaw

b. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

4. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Acton Wetland Protection Bylaw

Chapter F

a. Municipal Ordinance or Bylaw

b. Citation

The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

- c. The special conditions relating to municipal ordinance or bylaw are as follows:

SEE ORDER OF CONDITIONS, FORM E, ISSUED UNDER THE ACTON WETLAND PROTECTION  
BYLAW.

If you need more  
space for  
additional  
conditions,  
select box to  
attach a text  
document ☐



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**E. Issuance**

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form:

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

1. Date of Issuance

2. Number of Signers

Signatures:

Paul J. Lee  
Terrence Martland  
Liam Roberts

William F. Fung  
John N. Cullen

**Notary Acknowledgement**

Commonwealth of Massachusetts County of

Middlesex South

On this

Day

12th

of

Month

Year

December 2007

Before me, the undersigned Notary Public, personally appeared

Terrence Martland  
Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

**KNOWN TO ME**

Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of

ACTON

City/Town

Conservation Commission

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

☐ by hand delivery on

Date

☒ by certified mail, return receipt requested, on

Date

12/12/2007

Andrea H. Ristine  
Signature of Notary Public

Andrea H. Ristine

Printed Name of Notary Public

February 27, 2009

My Commission Expires (Date)



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

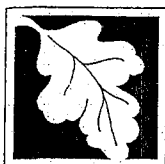
### F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate DEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant. Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order or Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, § 40) and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

**Section G, Recording Information is available on the following page.**





Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

85-984

**G. Recording Information**

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 7 of this form shall be submitted to the Conservation Commission listed below.

ACTON

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

ACTON

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

70 Newtown Road, Acton

Project Location

85-984

DEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex South

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

**DECISION  
NOTICE OF INTENT FILING  
FOR  
70 NEWTOWN ROAD  
TOWN ATLAS PLATE E-3, PARCEL 82  
DEP FILE NO. 85-984**

**Applicant:** Steven and Rachel Kelley

**Representatives:** Scott P. Hayes, PE No. 41017, Foresite Engineering; E. Michael Thomas, Esq.

**Date Filed:** November 8, 2007

**Hearing Closed:** November 21, 2007

**DECISION:**

On November 21, 2007, the Acton Conservation Commission voted unanimously to issue an Order of Conditions approving a Notice of Intent filing under the Massachusetts Wetlands Protection Act, G.L. Chapter 131, Section 40 and the Town of Acton Wetland Protection Bylaw

The Commission bases its decision upon the Findings of Fact set forth below.

**FINDINGS OF FACT:**

1. The 70 Newton Road parcel lies almost entirely within the overlapping 100-foot buffer zones of two wetlands located in the northerly and southerly corners of the property.
2. On August 1, 2001, the Commission issued an Order of Conditions (OOC) under the Town of Acton Wetland Protection Bylaw ("Bylaw"), approving the construction of a single-family residence with associated driveway and septic system. The Massachusetts Department of Environmental Protection previously had issued a Superseding Order of Conditions, approving the project under the Massachusetts Wetlands Protection Act ("Act"). The OOC under the Bylaw included special conditions that were to be permanent restrictions in the property deed: (1) the land located between the wetlands and the haybale-delineated limit-of-work was to be a permanently restricted area and remain undisturbed; (2) a portion of the driveway was to remain gravel-surfaced; and (3) the area over the septic leaching field was to be maintained as a wildlife habitat, with a wildflower meadow, native plantings, a blackberry hedge, logs and a turtle nesting area in accordance with a Wildlife Habitat Enhancement Plan. The owner, Frank Tricone ("Tricone"), subsequently sold the property to Westchester Company, Inc. ("Westchester"), on September 28, 2001; the deed to Westchester included the permanent restrictions required by the OOC. The Commission issued a Certificate of Compliance to Westchester on May 7, 2003.
3. The Applicants and current owners, the Kelleys, purchased the property, including residence, from Westchester on April 24, 2003, shortly before the issuance of the Certificate of Compliance. The Kelleys' deed does not include the language of the deed restrictions but incorporates the language via a reference to the deed containing the restrictive language that Westchester received from Tricone.
4. On May 27, 2004, the Kelleys, at the direction of the Commission, filed a Request for Determination of Applicability respecting the already completed but not previously authorized construction in the front of the house of a brick patio, walkway, flower beds and replacement front steps. The Commission issued a negative determination of applicability on June 16, 2004.

5. In May of 2007, the Kelleys paved the gravel portion of the driveway in violation of the deed restriction, and in violation of the requirements under the Act and Bylaw that they obtain prior authorization from the Commission for work within 100 feet of wetlands.
6. At the request of the Commission, the Kelleys appeared before the Commission on July 18, 2007 to discuss the illegal driveway paving. The Kelleys explained that they had paved the driveway because the gravel surface had become a safety concern, particularly in winter. They said that they were unaware of the deed restrictions. The Commission explained that the restrictions nonetheless were legally binding.
7. Commissioners and the Town Agent, Thomas Tidman, visited the property on September 25, 2007 and November 15, 2007. Given the contour and slope of the driveway, the Commissioners considered the paved surface to be more reasonable than gravel for erosion-control as well as safety. The Commissioners also concluded that leaving the pavement in place would be preferable to the disturbance that its removal would require, and that the existing infiltration trench along the northerly edge of the driveway would compensate for some of the increase in impervious surface.
8. A modest expanse of lawn occupied the area immediately to the south of the driveway where the wildlife habitat enhancement area should have been. The Kelleys said that the area was lawn when they bought the property, although only two weeks after their purchase the Commission issued the Certificate of Compliance confirming, among other things, that the wildlife habitat area was in place. The Commissioners concluded that leaving the lawn in place, and enforcing the prohibition against fertilizers and all other chemicals, would be acceptable in lieu of requiring the alteration of the lawn area.

The Commissioners requested that the Kelleys file a Notice of Intent (NOI) respecting the already completed paving and that the NOI plan include the additional work that the Kelleys wished to do, specifically, install two lamp posts along the edge of the driveway and replace the mailbox at the foot of the driveway.

9. At the hearing on November 21, 2007, the Kelleys requested additional permission to plant native shrubs on the northerly side of the driveway. In recompense for their violations of the Act and the Bylaw, the Kelleys agreed that prior to December 12, 2007 they would make a donation of \$1,000.00 to the Town as a "mitigation payment," to be used for conservation land trail maintenance.

#### **SPECIAL CONDITIONS:**

1. In accordance with the revised Notice of Intent Plan, dated November 7, 2007, Rev. 11/21/2007 (NOI Plan), the Applicants may install two lamp posts along the edge of the driveway and replace the existing mailbox located at the foot of the driveway.
2. The Applicants may plant native shrubs on the northerly side of the driveway.
3. *Bylaw Only* - This Order of Conditions (OOC) supplants the following Special Conditions of the Order of Conditions dated August 1, 2001 (DEP File No. 85-723), requiring as permanent deed restrictions that a portion of the driveway remain gravel and requiring the maintenance of a wildlife habitat in accordance with a Wildlife Habitat Enhancement Plan dated June 27, 2001. This OOC does not address, affect or supplant the special condition in the August 1, 2001 OOC requiring as a permanent deed restriction that the land lying between the wetlands and the 2001 limit-of-work, as partially delineated by stone walls shown in the NOI Plan to the north and south of the house, be a permanently restricted area and remain undisturbed.